MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2019/2020

PCL 0012 INTRODUCTION TO COMMERCIAL LAW

(All Sections/ Groups)

9 JUNE 2020

Exam Duration: 9.00 a.m. – 11.00 a.m.
(2 Hours)

INSTRUCTIONS TO STUDENT

1. This question paper consists of **THREE (3)** printed pages excluding the cover page.
2. It is **COMPULSORY** to answer **ALL** question from Section A and **ONE (1)** questions from Section B.
3. Please write all your answers in the Answer Booklet provided.

PART A: ANSWER ALL THE QUESTIONS

QUESTION 1

Hermione is an avid reader of Essential Defence Against Dark Arts by Arsenius Jigger. However, she does not own the latest edition of the said book. She heard from Draco that the killing curse's wand technique has been improved and updated in the latest edition of the book. Hence, she browsed through Flourish and Blotts, a famous bookshop in Diagon Alley for the said book.

To her dismay the book has been sold off nationwide and she has to wait for the book's reprint order. Mr. Blotts, the manager of Flourish and Blotts suggested to put in an order for the book and she will receive it in one-month time from the date of order. The cost is 100 gold coins and Hermione made a 50% down payment for the book.

Based on this scenario, students are to answer the following questions. Support your answers with the provisions in Sale of Goods Act 1957.

a) What type of goods is the book? Discuss. **(3 marks)**
b) List down the essential elements of a valid Contract of Sale. **(4 marks)**
c) Did Hermione fulfil the element of consideration is this agreement? Discuss. **(2 marks)**
d) Did Hermione enter into an Executed Contract of Sale? Explain. **(6 marks)**
e) How can Mr. Blotts discharge the contract by performance? Explain. **(6 marks)**
f) Hermione received her book one month from the purchase date. However, Mr. Blotts ordered 2 copies instead of one. Mr.Blotts insisted Hermione to purchase both copies. This has put Hermione in a pickle.
Discuss what can Hermione do about this situation. **(4 marks)**

(Total: 25 marks)

QUESTION 2

a) Per Scrutton LJ;

"...As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters without being asked of all the material circumstances, because the underwriters know nothing and the assured knows everything."

Based on the quotation above, explain the applicable principle of insurance with support of relevant authorities.

(10 marks)

Continued .....

b) Discuss the concept of 'insurable interest' and whether 'insurable interest' must exist at the time of the loss. Support your answer with relevant authorities.

(10 marks)

c) Distinguish between indemnity and contingency insurance.

(5 marks)

(Total: 25 marks)

QUESTION 3

a) Amir sells hand sanitizer during Restriction Movement Order period. Since the demand of hand sanitizer rapidly increased, Amir would like to borrow some amount of money from his best friend, Johan. Johan agrees to lend RM 100,000.00 to Amir on 1st April 2020. Amir gave a cheque of RM 100,000.00 dated 30th May 2020 to Johan as security for the loan. When Johan goes to bank for issuing the cheque on 3rd April 2020, the money cannot be withdrawn. The bank returns the cheque to Johan marked post-dated. He would like to sue Amir for forged cheque. As Johan's lawyer, he seeks for your advice. Support your answer with relevant authority.

(15 marks)

b) In Marfani & Co Ltd v Midland Bank Ltd,3 Diplock LJ observed that:

"A banker's business, of its very nature, exposes him daily to this peril. His contract with his customer requires him to accept possession of cheques delivered to him by his customer, to present them for payment to the banks on which the cheques are drawn, to receive payment of them and to credit the amount thereof to his own customer's account, either on receipt of the cheques themselves from the customer, or on receipt of actual payment of the cheques from the banks on which they are drawn. If the customer is not entitled to the cheque which he delivers to his banker for collection, the banker, however innocent and careful he might have been, would at common law be liable to the true owner of the cheque for the amount of which he receives payment, either as damages for conversion or under the cognate cause of action, based historically on assumpsit, for money had and received."

By referring to the case above, explain protection of the paying banker and collecting banker by supporting your answer with relevant authorities.

(10 marks)

(Total: 25 marks)

Continued .....

PART B: ANSWER ANY ONE (1) QUESTION ONLY

QUESTION 4

"The company is at law a different personal together from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands received the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members, liable in any shape or form, except to the extent and in the manner provided by the Act"

(Lord Macnaghten, 1897, AC22)

Company is an artificial person with separate legal personality. This theory was established in the case above. Discuss the principle and support your answer with the necessary provisions and case laws.

(25 marks)

(Total: 25 marks)

OR;

QUESTION 5

The Companies Commission of Malaysia (SSM) is a statutory body formed as a result of a merger between the Registrar of Companies (ROC) and the Registrar of Businesses (ROB) in Malaysia which regulates business entities including **Companies and Partnership**.

Discuss the concept of those business entities and what are differences between them.

(25 marks)

(Total: 25 marks)

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